



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
REAL ESTATE APPRAISER COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-1166
615-741-1831**

**October 20, 2008
Second Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met October 20, 2008, at 9:30 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

James E. Wade, Jr.
Herbert Phillips
Dr. Edward A. Baryla
Thomas R. Carter
Kenneth Woodford
Najanna Coleman

COMMISSION MEMBERS ABSENT

Jason West
William R. Flowers, Jr.
Marc Headden

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Jesse D. Joseph, Staff Attorney
Judy Elmore, Administrative Assistant

ADOPT AGENDA

The Commission voted to adopt the agenda. Mr. Woodford made the motion to accept the agenda and it was seconded by Dr. Baryla. The motion carried unopposed.

MINUTES

The September 2008 minutes were reviewed. Mr. Phillips made the motion to accept the minutes as written. It was seconded by Mr. Carter. The motion carried unopposed.

GENERAL BUSINESS

Staffing Issues

Assistant Commissioner, Steve Majchrzak, addressed the Commission again as a follow-up discussion to previous months pertaining to continued staffing issues that the Real Estate Appraiser Commission has had since the end of May, 2008. The Real Estate Appraiser Commission is currently down to only one employee: Administrative Director, Nikole Avers, and the Commission share a staff resource of three additional personnel with 10 other programs. Assistant Commission Majchrzak addressed the Commission and stated this intention was to pool a larger number of staff for these Boards and for the three current staff members to cross train for the Boards. He then stated in the immediate future he was anticipating the transfer of a staff member for this Board. The Commission thanked Mr. Majchrzak for continuing to keep the needs of this program under his attention and informing them of what was being done to provide resources to conduct the business of the program.

Applicant Conference

Marjorie Kay Lane made application to become a registered trainee after her registration had expired beyond the grace period for renewal. Ms. Avers stated she had previously been disciplined by the Commission in the form of a consent order which included a \$1,000 civil penalty and a required fifteen (15) hour USPAP course because of violations of the Ethics Rule – Conduct section, in that she had sent an invoice to a bank for “services rendered” to gain payment for football tickets given to a loan officer. The Commission asked if the terms of the order were completed, and Ms. Lane stated she had complied with the terms of the agreement. Ms. Avers confirmed. Mr. Woodford made a motion to accept her application for registration as a trainee. Ms. Coleman seconded that motion. The motion carried unopposed.

Experience Interviews

Jill M. Hunt made application to upgrade from a registered trainee to become a certified general appraiser. Mr. Wade was the reviewer and stated that he would highly recommend approval of her experience. Mr. Woodford made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Cody J. Wheeler made application to upgrade from a registered trainee to certified residential appraiser. Mr. Phillips was the reviewer and stated his reports were satisfactory recommended approval of his experience. Mr. Carter made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

Lloyd Cowan Parker made application to upgrade from a licensed appraiser to become a certified residential appraiser. Mr. Phillips was the reviewer and stated that the reports were satisfactory and experience credit should be granted. Mr. Woodford made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Elizabeth McCracken Sykes made application to upgrade from a certified residential appraiser to become a certified general appraiser. Mr. Phillips was the reviewer and stated that he wanted the applicant to submit one additional commercial appraisal report which should include all three approaches to value and include support for capitalization rates and expense ratios used. If the report was found to

be satisfactory, then no second interview should be required. Mr. Woodford made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Jeremy Wayne Stephens made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Carter was the reviewer and stated that the reports were satisfactory and experience credit should be granted. Mr. Woodford made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

Jeff Ball made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Carter was the reviewer and stated that the reports were satisfactory and experience credit should be granted. Mr. Woodford made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

Education Committee Report

Dr. Barylka reviewed the education and individual course approval requests and recommended approval of all courses as written and all individual education requests (see report below). Mr. Phillips made the motion to accept Dr. Barylka's recommendation. Ms. Coleman seconded that motion. The motion carried unopposed.

EDUCATION COMMITTEE REPORT

Course Name	Course Number	Course Name	Instructors	Hrs.	Type	Rec'd
REALTYPLE X, LLC	1240	National USPAP Update (7 Hr)	Darrin Ike	7	CE	Approved
NAIFA	1241	FHA – Current Appraisal Requirements	Dale Bynum Barry R. Cleverdon	7	CE	Approved
MCKISSOCK	1242	On-Line Land and Site Valuation	Alan Simmons	7	CE	Approved
APPRAISAL INSTITUTE	1244	On-line Supervising Appraisal Trainees	Sandra K. Adomatis	4	CE	Approved
APPRAISAL INSTITUTE	1245	On-line Rates and Ratios: Making Sense of GIMs, OARs, and DCF	Kenneth Lusht	7	CE	Approved
APPRAISAL INSTITUTE	1246	Valuation of Green Residential Properties	Alan Simmons			Approved
APPRAISAL INSTITUTE	1243	General Appraiser Market Analysis & Highest and Best Use	Richard Parli David Lenhoff	30/ 28	QE/C E	Approved
APPRAISAL INSTITUTE	1249	Appraising for Alternate Uses: Life Beyond Lending	Danny K. Wiley	7	CE	Approved
APPRAISAL INSTITUTE	1250	Condemnation Appraising: Principles & Applications	Roscoe Shiplett & Stephen Matonis	22/ 21	CE	Approved
THE COLUMBIA INSTITUTE	1247	On-Line 7-Hour National USPAP Update Course, No. 831	George R. Harrison & Robert Hetrick	7	CE	Approved
THE COLUMBIA INSTITUTE	1248	On-Line FHA and VA Appraisal Basics, No. 836	George R. Harrison & Robert Hetrick	7	CE	Approved

Individual Course Approval

Course Name	License #	Course Provider	Course Name	Hrs	Type
Harold G. Belle	1489	The Wilson Education Group	UPSPAP Update, 7 hr.	7	CE
Jill M. Hunt	3735	American Society of Appraisers	Principles of Valuation – Intro to Business Valuation	30	QE (2007 Rules)
Jill M. Hunt	3735	American Society of Appraisers	The Income Approach	30	QE (2007 Rules)
Jill M. Hunt	3735	American Society of Appraisers	The Market Approach to Value	30	QE (2007 Rules)
Craig Huber	1307	CCIM Institute	Financial Analysis for Commercial Investment Real Estate	40	CE

LEGAL REPORT

Robin T. Kidwell (approved 9/08) - signed Consent Order agreeing to pay a \$1,000 civil penalty and to take and pass a 15 hour USPAP course, and imposing a one (1) year suspension of his license retroactive to January 1, 2008 due to numerous violations of USPAP while practicing on an expired license for the first 5 months of this year, and due to his admitted violations of SR's 1-1(a) & (b), 1-4(a), and 2-1(a) & (b), Tenn. Code Ann. §§ 62-39-103(a), 62-39-326(5) and 62-39-329, and Tenn. Comp. R. & Reg. 1255-1-.01(2). Respondent is not eligible for a return to active status until January 1, 2009 and until he submits documentary evidence of his completion of the required education and correspondence to the Administrative Director specifically requesting such reactivation. Within ten (10) appraisal reports Respondent prepared over the first 5 months of this year, it was determined, amongst other things, that Respondent:

- (a. provided no land sales data, maps or sketch sheets;
- (b. provided no reasoning, explanations or summaries supporting his lack of adjustments, or the different rates of adjustment applied to very similar comps;
- (c. provided no way to verify square footage in many of the reports, or to identify many of the comp sales by address or location map; and
- (d. provided no illustrations of the derivation of depreciation in the cost approach, and did not summarize within his reports his reviews of recent lot sales and his site to total value ratios.

Carol A. Smith (approved 07/08) – Respondent signed a consent order agreeing that in 3 appraisals, she failed to maintain a high level of public trust in appraisal practice, that she communicated misleading or fraudulent reports, that she did not complete certain assignments competently, that she did not comply with certain supplemental standards and committed many substantial errors of omission and commission which significantly affected her appraisals. Respondent also violated SR's 1-1(b), 1-2(e)(i), 1-4(a) and 1-5(a) & (b), 2-1(a) & (b), 2-2(b)(iii), (viii), & (ix). This consent order suspends Respondent's certification for 18 months, with 6 months actual suspension to serve followed by 12 months of probation. The 12 month probationary period requires Respondent to submit an experience log to the Admin. Director every month and to submit 3 reports from the first experience log for review [with 1 of the 3 being a 2-4 family report]. The Admin. Director also has the ability to request copies of any appraisals from the Respondent's logs

for the 2nd through the 12th months of probation, and Respondent is not allowed to supervise any trainees during the probationary period. Respondent is also required to complete the following courses by December 31, 2008: a 30 hour sales comparison and income approach course; a 30 hour cost approach course; and a 15 hour USPAP course.

1. L08-APP-RBS-2008012231 Commissioner Carter was the Reviewer

Complainant, the property owner, complained that the value of her home was under-stated. As of the effective date of the appraisal there were sufficient sales to support the value of \$116,000 Respondent indicated in the appraisal. The Complainant was the borrower in a refinance transaction and alleged that the county's appraisal and another recent appraisal valued her property at between \$133,000 and \$137,000. There was no evidence in the file of any other appraisal submitted by the Complainant.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Commissioner Carter finds that the appraisal was complete and the work material well documented. The data provided was adequate, the techniques were appropriate to form an opinion of value, and the analyses, opinions, and conclusions were appropriate and reasonable. Commissioner Carter found no basis for disagreement with the final reconciliation, and accordingly, recommends dismissal.

Vote: Mr. Woodford made the motion to accept the recommendation and Dr. Baryla seconded the motion. The motion carried unopposed.

2. L08-APP-RBS-2008017271 No Reviewer was necessary

Complainant, a consumer, alleged that Respondent, a licensed appraiser in California, appraised 3100 acres of prop in Tennessee without first obtaining a certified general credential, and that the property was under-valued.

Investigation by staff and counsel for the Commission that while Respondent titled the report as an "Evaluation of Loan Collateral" in an attempt to satisfy T.C.A. § 62-39-104(d)(1) (Real Estate Appraiser law does not apply to certain evaluations of the value of real estate value serving as collateral for a loan made by a federal regulatory institution under certain circumstances), on the second page of this report the second paragraph is titled "Purpose of the Appraisal", and he stated the purpose to be to estimate the "as-is" market value of the fee simple interest in the subject properties". Respondent used the terms "market value" in 2 other places in the report as well, and he did not use the required terms "This is not an Appraisal" on the face of the evaluation, or anywhere else. It is not known by staff and counsel for the commission whether the mortgage lender met the requirements of Tenn. Code Ann. § 62-39-104(a).

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Based on the Respondent's utilization of the terms "appraisal" and "market value" several times in the report which is alleged to be only an evaluation, staff and counsel recommend that this file be closed with a letter of warning to be issued to the Respondent due to these infractions of § 62-39-104, and that a copy of said letter be forwarded to the regulatory authorities in California.

Vote: Mr. Phillips made the motion to accept the recommendation and Dr. Baryla seconded the motion. The motion carried unopposed.

3. L08-APP-RBS-2008017351 No Reviewer was necessary

Respondent has no real estate appraiser certificate or license at all and is a licensed real estate broker. Respondent recently ran an unsuccessful campaign for County Property Assessor and made several statements at candidate forums to the effect that he was the only candidate who "appraised property professionally every day, every week, every year". He also stated that he assigned potential home owners a "value range". When asked specifically at such forums whether he was a licensed real estate appraiser, Respondent was silent. Counsel for the Commission forwarded correspondence to Respondent requesting copies of any such opinions in which he assigned such a value range, and asking further questions regarding whether he was actually providing real estate appraisal services in Tennessee. Respondent responded by claiming that, in hindsight, using the term "appraise" was not the most accurate way for him to describe his experience, and denying that he acted as a professional appraiser and that he had prepared no documents. He did, however, continue to insist that all real estate agents "assign preliminary value ranges" based on current market comparisons when listing a property.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: While staff and counsel are concerned about the Respondent's continued assertion that he assigns preliminary value ranges to properties, since real estate brokers are not entitled to offer an opinion of value pursuant to Tenn. Code Ann. § 62-39-104(a), and while we are also troubled by his comments made during the political race, it is not clear that he has engaged in the unlicensed practice of real estate appraising. Accordingly, we recommend that this file be closed with issuance of a letter of warning for referring to his activity as "assigning value ranges" for real estate and his misleading public statements about having appraised property in Tennessee, and that a copy of such letter of warning be forwarded to the Tennessee Real Estate Commission.

Vote: Mr. Carter made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

4. L08-APP-RBS-2008017841 No Reviewer was necessary

Respondent previously worked as an appraiser in Complainant's office and is the Complainant's son-in-law. In August of this year, the Respondent left the Complainant's company, and Complainant contends that Respondent took files (electronic and paper) after Respondent left. Respondent has indicated that he personally delivered all of the Complainant's files (on two CDs) to another named individual at the Complainant's company. The Respondent also claims he took none of Complainant's original paper files, and that the Complainant has stated that he would make respondent's life "miserable". The Respondent indicates he was entitled and obligated to take the electronic copies which he took.

Prior Complaint/Disciplinary History: None.

Recommendation and reasoning: Staff and counsel for the Commission recommend that this file be closed and flagged for possible future reference if this matter comes before us again. On the basis of the record as it stands, there does not appear to be provable evidence of unlawful removal of business files by the Respondent.

Vote: Mr. Phillips made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

5. L08-APP-RBS-2008018721 No Reviewer was necessary

The Complainant is a lending officer for a client bank, and Respondent inspected the property on July 30, 2008. Complainant stated that Respondent promised to deliver the completed appraisal within 3 days, but in his written response to the Commission, the Respondent claims that the appraisal took him a little longer than anticipated because the dwelling was larger than stated on public records. Moreover, Respondent signed the report on August 4 and attempted to e-mail it to the Complainant 3 times before leaving town - apparently for a short vacation. Respondent did not learn until returning from out of town that he had the wrong e-mail address, but Respondent appeared to promptly cure this matter by getting the report to the Complainant either on, or a day or so after the Complainant sent the disciplinary complaint in to this office on August 12.

Prior Complaints/Disciplinary History: None.

Recommendation and reasoning: Under the circumstances presented herein, it does not appear that there has been any significant delay on Respondent's part and the minimal delay does not rise to the level so as to adversely affect the overall public trust which all appraisers are responsible to protect under the Preamble of USPAP. Accordingly, staff and counsel for the Commission recommend that this complaint be dismissed.

Vote: Mr. Woodford made the motion to accept the recommendation and Dr. Barylka seconded the motion. The motion carried unopposed.

6. & 7. L08-APP-RBS-2008019991 & L08-APP-RBS-2008019992 No reviewer was necessary

The Complainant, a consumer from out of state, alleged that the Respondents under-valued a residential property which cost him the loan he for which he applied.

The Respondents stated in their response letter that their opinion of the value of the home is consistent with the appraisal report submitted to the client and is supported by documents they attached to the response letter.

Respondent in 2008019991

License History: Certified Residential 10/11/1991 to Present

Prior Complaint / Disciplinary History: 200504045 (Closed with a letter of caution)

Respondent in 2008019992

License History: Registered Trainee 9/9/2003 to Present

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: The improvements to the property were listed in the appraisal report that the Complainant described in the complaint. The subject was built in 1950 and was reported to have a 20 year effective age, which the complainant identified as because the subject was in "above average condition for a home of this age". The comparable sales used were within 0.26 miles of the subject property and within 90 square feet or less of the subject size. Adjustments made in the sales comparison approach appear consistent with those made for depreciation in the cost approach. Photos included in

the appraisal report of the subject and comparable sales appear to show properties of similar style and quality. Updates listed on MLS sheets for the comparable sales used appear consistent with those described for the subject property. Staff and counsel recommend that these two complaints be dismissed due to lack of USPAP violations

Vote: Mr. Phillips made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

8. L08-APP-RBS-2008021491 There was no Reviewer

This matter was processed by the Staff Administrative Director upon the Complaint submitted by a consumer who alleged that the Respondent omitted 800 sq. ft. of gross living area and a full bathroom from a residential appraisal report.

The Respondent stated in her response letter that she was not given a chance to try to explain an appraisal report to the Complainant. "She is so determined that I did something wrong and mentioned (my) E & O Insurance. My suggestion as a "realtor" is that she take an appraisal class so she will correctly be able to represent a seller's property. Please let me know if you need any other information. It is quite interesting that she could not tell me where I mismeasured and that after 30 years in the appraisal business, I missed 800 square feet. More than anything, I am sure she is upset with her value which must not have allowed her to refinance. I was not able to use the comparables she provided me. Maybe she will submit them to you for your review."

Administrative Staff Observations from complaint file; (this is not an appraisal review): The Respondent did not answer the allegation in her response letter to the omission of square footage or omission of the bathrooms. MLS information was requested from the Respondent's workfile by staff. The Respondent did not submit MLS sheets for the comparable sales used though that is a data source referenced for these properties. Only the MLS information and the court house records for the subject property was submitted. This could be an indication that the Respondent has fail to maintain a **workfile** as required. The difference in bathroom count between the Complainant (3 baths) and the Respondent's report appears to be because the Respondent identified two bathrooms on the main level of the house and a bath in the basement level of the house. The square footage difference also appears to stem from this separation of the square footage of the basement area and the above grade living area. The MLS listing from the time of the purchase in 2006 listed two baths on the main level and one in the basement and broke down the square footage to 1500 above grade and 1500 below grade (basement), but listed the approximate square footage as the total 3000 square feet. The Respondent's report lists the gross living area as 2,224 square feet with the same amount of basement finish. This appears to be the cause for the Complainant alleging that 800 square feet was omitted, when the total listed by the Respondent in the report is actually 1,448 square feet larger than the listing included in 2006.

Staff observations from the appraisal report include:

1. Misleading neighborhood and market information. The Respondent identified the growth as slow and that marketing times have been extended for "used" home sales; however, the market was reported as stable and supply and demand in balance and no adjustments were made for time of sale. Staff data for the subject area indicate an increase in foreclosure properties and a decline in property values, also the indicated value of the subject property is well above the indicated median for the neighborhood. No reconciliation

was included as to why three comparables used were over 3 miles from the subject property and the fourth was over 2 miles.

2. There is a lack of support included in the report for the effective age opinion or the condition of the subject property. The subject was built in 1963 and has a reported effective age of 10 years. This is not consistent with age information reported for one-unit housing predominance. The description in the improvement section reports "overall good condition with normal depreciation for its age". There is no description of updating or remodeling. In the cost approach depreciation does not appear to have been adequately reconciled with sales data. The sales comparison approach has an indicated value opinion of \$180,000 while the cost approach indicated \$222,462. Assuming the cost for the improvements and the site value indications are correct, then the depreciation estimate appears to fail to reconcile with included market data in the sales comparison approach by over \$40,000.
3. The adjustment for square footage also conflicts with the depreciation indication in the cost approach. In the sales comparison approach, gross living area was adjusted at \$20 per square foot. In the cost approach the depreciated cost per square foot indication was \$60.20 per square foot. This would either indicate that the adjustment in the sales comparison approach is inadequate or the depreciation applied in the cost approach was insufficient to reconcile market reaction. This is also indicated by the adjustment of \$10 per square foot for basement living area in the sales comparison approach with an indicated depreciated cost per square foot of \$18.10.

License History: Licensed Appraiser 1/31/1995 to 11/09/1995
 Certified Residential 11/09/1995 to Present

Prior Complaint / Disciplinary History: 200003385 (Dismissed)

Recommendation for Commission: A consent order is recommended for the above USPAP violations which include: Ethics Rule – Record Keeping Section; SR 2-2 (b) (viii); SR 1-4 (b); SR 1-4 (a) or (b). The above noted violations appear to represent a lack of competency in reporting neighborhood and market data and reconciling depreciation data. The consent order should contain a requirement that the Respondent complete a seven (7) hour Residential Report Writing course and a fifteen (15) hour Site Valuation and Cost Approach course. The referenced courses may not be used for continuing education on the next renewal cycle and must be completed and evidence of completion to be returned to the TREAC office within 120 days of execution of the consent order. In addition, an affidavit should be included, to be signed by the Respondent and notarized, that includes language that the Respondent has read and understands the Ethics Rule – Record Keeping section of USPAP and Standards Rule 2-2 (b) (viii), including the comments to these sections of USPAP.

Vote: Mr. Phillips made the motion to accept the recommendation and Dr. Baryla seconded the motion. The motion carried unopposed.

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Being no further business, the meeting was adjourned at 10:22 a.m.

Chairman, James E. Wade, Jr.

Nikole Avers, Administrative Director